

110TH CONGRESS
1ST SESSION

H. R. 3782

To reiterate the exclusivity of the Foreign Intelligence Surveillance Act of 1978 as the sole authority to permit the conduct of electronic surveillance, to modernize surveillance authorities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2007

Mr. HOLT (for himself, Mr. TIERNEY, Ms. SCHAKOWSKY, Ms. WATSON, and Mr. NADLER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reiterate the exclusivity of the Foreign Intelligence Surveillance Act of 1978 as the sole authority to permit the conduct of electronic surveillance, to modernize surveillance authorities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Foreign Intelligence Surveillance Modernization Act of
6 2007”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Definitions.

TITLE I—CONSTRUCTION OF FOREIGN INTELLIGENCE SURVEILLANCE AUTHORITY

- Sec. 101. Reiteration of chapters 119 and 121 of title 18, United States Code, and Foreign Intelligence Surveillance Act of 1978 as exclusive means by which domestic electronic surveillance may be conducted.
 Sec. 102. Information for Congress on the terrorist surveillance program and similar programs.

TITLE II—APPLICATIONS AND PROCEDURES FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

- Sec. 201. Extension of period for applications for orders for emergency electronic surveillance and physical search.
 Sec. 202. Foreign Intelligence Surveillance Court matters.
 Sec. 203. Document management system for applications for orders approving electronic surveillance.
 Sec. 204. Additional personnel for preparation and consideration of applications for orders approving electronic surveillance and physical search.
 Sec. 205. Training of intelligence community personnel in foreign intelligence collection matters.
 Sec. 206. Enhancement of electronic surveillance authority in wartime and other collection.

TITLE III—CLARIFICATIONS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

- Sec. 301. Repeal of Protect America Act.
 Sec. 302. Acquisition of foreign-to-foreign communications.

TITLE IV—OTHER MATTERS

- Sec. 401. Authorization of appropriations.
 Sec. 402. Effective date.
 Sec. 403. Sunset.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) CONGRESSIONAL INTELLIGENCE COMMIT-
 6 TEES.—The term “congressional intelligence com-
 7 mittees” means—

1 (A) the Select Committee on Intelligence of
2 the Senate; and

3 (B) the Permanent Select Committee on
4 Intelligence of the House of Representatives.

5 (2) ELECTRONIC SURVEILLANCE.—The term
6 “electronic surveillance” has the meaning given such
7 term in section 101(f) of the Foreign Intelligence
8 Surveillance Act of 1978 (50 U.S.C. 1801(f)).

9 (3) PHYSICAL SEARCH.—The term “physical
10 search” has the meaning given such term in section
11 301(5) of the Foreign Intelligence Surveillance Act
12 of 1978 (50 U.S.C. 1821(5)).

13 (4) PEN REGISTER AND TRAP AND TRACE DE-
14 VICE.—The terms “pen register” and “trap and
15 trace device” have the meaning given such terms in
16 section 3127 of Title 18.

17 (5) FOREIGN INTELLIGENCE SURVEILLANCE
18 COURT.—The term “Foreign Intelligence Surveil-
19 lance Court” means the court established by section
20 103(a) of the Foreign Intelligence Surveillance Act
21 of 1978 (50 U.S.C. 1803(a)).

22 (6) UNITED STATES PERSON.—The term
23 “United States person” has the meaning given such
24 term in section 101(i) of the Foreign Intelligence
25 Surveillance Act of 1978 (50 U.S.C. 1801(i)).

1 **TITLE I—CONSTRUCTION OF**
 2 **FOREIGN INTELLIGENCE**
 3 **SURVEILLANCE AUTHORITY**

4 **SEC. 101. REITERATION OF CHAPTERS 119 AND 121 OF**
 5 **TITLE 18, UNITED STATES CODE, AND FOR-**
 6 **EIGN INTELLIGENCE SURVEILLANCE ACT OF**
 7 **1978 AS EXCLUSIVE MEANS BY WHICH DOMES-**
 8 **TIC ELECTRONIC SURVEILLANCE MAY BE**
 9 **CONDUCTED.**

10 (a) EXCLUSIVE MEANS.—Section 2511(2)(f) of Title
 11 18, United States Code, is amended by striking “and pro-
 12 cedures in this chapter” and all that follows, and inserting
 13 “and procedures in this chapter, chapters 121 and 206
 14 of this title, and the Foreign Intelligence Surveillance Act
 15 of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive
 16 means by which electronic surveillance, as defined in sec-
 17 tion 101 of such Act, the interception of domestic wire,
 18 oral, and electronic communications, the accessing of
 19 stored electronic communications, and the installation and
 20 use of pen registers and trap and trace devices may be
 21 conducted.”.

22 (b) AMENDMENT TO FOREIGN INTELLIGENCE SUR-
 23 VEILLANCE ACT OF 1978.—Section 109(a) of the Foreign
 24 Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a))
 25 is amended by striking “authorized by statute” each place

1 it appears and inserting “authorized by titles I or IV of
 2 the Foreign Intelligence Surveillance Act (50 U.S.C.
 3 1801–1811 and 1841–1846), or chapters 119, 121, or 206
 4 of title 18, United States Code,” and section 307(a) of
 5 the Foreign Intelligence Surveillance Act of 1978 (50
 6 U.S.C. 1827(a)) is amended by striking “as authorized by
 7 statute” and inserting “as authorized by title III of the
 8 Foreign Intelligence Surveillance Act (50 U.S.C. 1821–
 9 1829) or Rule 41 of the Federal Rules of Criminal Proce-
 10 dure or any other warrant issued by a court of competent
 11 jurisdiction”.

12 (c) AMENDMENT TO TITLE 18, UNITED STATES
 13 CODE.—Section 2511(2)(a)(ii)(B) of title 18, United
 14 States Code, is amended by striking “statutory require-
 15 ments” and inserting “requirements under titles I and IV
 16 of the Foreign Intelligence Surveillance Act of 1978 (50
 17 U.S.C. 1801 et seq.), this chapter, or chapter 121 or 206
 18 of this title”.

19 **SEC. 102. INFORMATION FOR CONGRESS ON THE TER-**
 20 **RORIST SURVEILLANCE PROGRAM AND SIMI-**
 21 **LAR PROGRAMS.**

22 As soon as practicable after the date of the enactment
 23 of this Act, but not later than seven days after such date,
 24 the President shall fully inform each member of the con-
 25 gressional intelligence committees on the following:

1 (1) The Terrorist Surveillance Program of the
2 National Security Agency.

3 (2) Any program in existence from September
4 11, 2001, until the effective date of this Act that in-
5 volves, whether in part or in whole, the electronic
6 surveillance of United States persons in the United
7 States for foreign intelligence or other purposes, and
8 which is conducted by any department, agency, or
9 other element of the United States Government, or
10 by any entity at the direction of a department, agen-
11 cy, or other element of the United States Govern-
12 ment, without fully complying with the procedures
13 set forth in the Foreign Intelligence Surveillance Act
14 of 1978 (50 U.S.C. 1801 et seq.) or chapter 119,
15 121, or 206 of title 18, United States Code.

16 **TITLE II—APPLICATIONS AND**
17 **PROCEDURES FOR ELEC-**
18 **TRONIC SURVEILLANCE FOR**
19 **FOREIGN INTELLIGENCE**
20 **PURPOSES**

21 **SEC. 201. EXTENSION OF PERIOD FOR APPLICATIONS FOR**
22 **ORDERS FOR EMERGENCY ELECTRONIC SUR-**
23 **VEILLANCE AND PHYSICAL SEARCH.**

24 Sections 105(f) and 304(e) of the Foreign Intel-
25 ligence Surveillance Act of 1978 (50 U.S.C. 1805(f) and

1 1824(e)) are amended by striking “72 hours” both places
 2 it appears in each of those sections and inserting “7
 3 days”.

4 **SEC. 202. FOREIGN INTELLIGENCE SURVEILLANCE COURT**
 5 **MATTERS.**

6 (a) **AUTHORITY FOR ADDITIONAL JUDGES.**—Section
 7 103(a) of the Foreign Intelligence Surveillance Act of
 8 1978 (50 U.S.C. 1803(a)) is amended—

9 (1) by inserting “(1)” after “(a)”;

10 (2) in paragraph (1), as so designated, by delet-
 11 ing “11” and replacing it with “15” and inserting
 12 “at least” before “seven of the United States judi-
 13 cial circuits”; and

14 (3) by designating the second sentence as para-
 15 graph (3) and indenting such paragraph, as so des-
 16 ignated, two ems from the left margin.

17 (b) **CONSIDERATION OF EMERGENCY APPLICA-**
 18 **TIONS.**—Such section is further amended by inserting
 19 after paragraph (2), as added by subsection (a)(4) of this
 20 section, the following new paragraph:

21 “(2) A judge of the court shall make a determination
 22 to approve, deny, or modify an application submitted pur-
 23 suant to subsection (f) of section 105, subsection (e) of
 24 section 304, or section 403 not later than 24 hours after
 25 the receipt of such application by the court.”.

1 **SEC. 203. DOCUMENT MANAGEMENT SYSTEM FOR APPLICA-**
2 **TIONS FOR ORDERS APPROVING ELEC-**
3 **TRONIC SURVEILLANCE.**

4 (a) **SYSTEM REQUIRED.**—The Attorney General
5 shall, in consultation with the Director of National Intel-
6 ligence and the Foreign Intelligence Surveillance Court,
7 develop and implement a secure, classified document man-
8 agement system that permits the prompt preparation,
9 modification, and review by appropriate personnel of the
10 Department of Justice, the Federal Bureau of Investiga-
11 tion, the National Security Agency, and other applicable
12 elements of the United States Government of applications
13 under the Foreign Intelligence Surveillance Act of 1978
14 (50 U.S.C. 1804) before their submission to the Foreign
15 Intelligence Surveillance Court.

16 (b) **SCOPE OF SYSTEM.**—The document management
17 system required by subsection (a) shall—

18 (1) permit and facilitate the prompt submittal
19 of applications to the Foreign Intelligence Surveil-
20 lance Court under the Foreign Intelligence Surveil-
21 lance Act of 1978; and

22 (2) permit and facilitate the prompt transmittal
23 of rulings of the Foreign Intelligence Surveillance
24 Court to personnel submitting applications described
25 in paragraph (1), and provide for the secure elec-
26 tronic storage and retrieval of all such applications

1 and related matters with the court and for their se-
2 cure transmission to the National Archives and
3 Records Administration.

4 **SEC. 204. ADDITIONAL PERSONNEL FOR PREPARATION**
5 **AND CONSIDERATION OF APPLICATIONS FOR**
6 **ORDERS APPROVING ELECTRONIC SURVEIL-**
7 **LANCE AND PHYSICAL SEARCH.**

8 (a) OFFICE OF INTELLIGENCE, NATIONAL SECURITY
9 DIVISION.—

10 (1) ADDITIONAL PERSONNEL.—The Office of
11 Intelligence, National Security Division of the De-
12 partment of Justice is hereby authorized such addi-
13 tional personnel as may be necessary to carry out
14 the prompt and timely preparation, modification,
15 and review of applications under Foreign Intel-
16 ligence Surveillance Act of 1978 for orders under
17 that Act for foreign intelligence purposes.

18 (2) ASSIGNMENT.—The Attorney General shall
19 assign personnel authorized by paragraph (1) to and
20 among appropriate offices of the United States In-
21 telligence Community in order that such personnel
22 may directly assist personnel of the Intelligence
23 Community in preparing applications described in
24 that paragraph and conduct prompt and effective

1 oversight of the activities of such agencies under
2 Foreign Intelligence Surveillance Court orders.

3 (b) DIRECTOR OF NATIONAL INTELLIGENCE.—

4 (1) ADDITIONAL LEGAL AND OTHER PER-
5 SONNEL.—The Director of National Intelligence is
6 hereby authorized such additional legal and other
7 personnel as may be necessary to carry out the
8 prompt and timely preparation of applications under
9 the Foreign Intelligence Surveillance Act of 1978 for
10 orders under that Act approving electronic surveil-
11 lance for foreign intelligence purposes.

12 (2) ASSIGNMENT.—The Director of National
13 Intelligence shall assign personnel authorized by
14 paragraph (1) to and among the agencies of the
15 United States Intelligence Community, including the
16 field offices of the Federal Bureau of Investigation,
17 in order that such personnel may directly assist per-
18 sonnel of the Intelligence Community in preparing
19 applications described in that paragraph.

20 (c) ADDITIONAL LEGAL AND OTHER PERSONNEL
21 FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT.—

22 There is hereby authorized for the Foreign Intelligence
23 Surveillance Court such additional staff personnel as may
24 be necessary to facilitate the prompt and timely consider-
25 ation by that Court of applications under the Foreign In-

1 telligence Surveillance Act of 1978 for orders under that
2 Act approving electronic surveillance for foreign intel-
3 ligence purposes. Personnel authorized by this paragraph
4 shall perform such duties relating to the consideration of
5 such applications as that Court shall direct.

6 (d) SUPPLEMENT NOT SUPPLANT.—The personnel
7 authorized by this section are in addition to any other per-
8 sonnel authorized by law.

9 **SEC. 205. TRAINING OF INTELLIGENCE COMMUNITY PER-**
10 **SONNEL IN FOREIGN INTELLIGENCE COL-**
11 **LECTION MATTERS.**

12 The Director of National Intelligence shall, in con-
13 sultation with the Attorney General—

14 (1) develop regulations to establish procedures
15 for conducting and seeking approval of electronic
16 surveillance, physical search, and the installation
17 and use of pen registers and trap and trace devices
18 on an emergency basis, and for preparing and prop-
19 erly submitting and receiving applications and orders
20 under the Foreign Intelligence Surveillance Act of
21 1978; and

22 (2) prescribe related training on the Foreign
23 Intelligence Surveillance Act of 1978 and related
24 legal matters for the personnel of the applicable
25 agencies of the Intelligence Community.

1 **SEC. 206. ENHANCEMENT OF ELECTRONIC SURVEILLANCE**
 2 **AUTHORITY IN WARTIME AND OTHER COL-**
 3 **LECTION.**

4 Sections 111, 309, and 404 of the Foreign Intel-
 5 ligence Surveillance Act of 1978 (50 U.S.C. 1811, 1829,
 6 and 1844) are amended by striking “Congress” and in-
 7 serting “Congress or an authorization for the use of mili-
 8 tary force described in section 2(c)(2) of the War Powers
 9 Resolution (50 U.S.C. 1541(c)(2)) if such authorization
 10 contains a specific authorization for foreign intelligence
 11 collection under this section, or if the Congress is unable
 12 to convene because of an attack upon the United States.”.

13 **TITLE III—CLARIFICATIONS TO**
 14 **THE FOREIGN INTELLIGENCE**
 15 **SURVEILLANCE ACT OF 1978**

16 **SEC. 301. REPEAL OF PROTECT AMERICA ACT.**

17 (a) IN GENERAL.—The Protect America Act (Public
 18 Law 110–55) is hereby repealed.

19 (b) CONFORMING AMENDMENTS.—The Foreign In-
 20 telligence Surveillance Act of 1978 (50 U.S.C. 1801 et
 21 seq.) is amended—

22 (1) in the table of contents in the first section,
 23 by striking the items relating to sections 105A,
 24 105B, and 105C;

25 (2) in section 103(e)—

1 (A) in paragraph (1), by striking
2 “105B(h) or 501(f)(1)” and inserting
3 “501(f)(1)”; and

4 (B) in paragraph (2), by striking
5 “105B(h) or 501(f)(1)” and inserting
6 “501(f)(1)”; and

7 (3) by striking sections 105A, 105B, and 105C.

8 **SEC. 302. ACQUISITION OF FOREIGN-TO-FOREIGN COMMU-**
9 **NICATIONS.**

10 The Foreign Intelligence Surveillance Act of 1978
11 (50 U.S.C. 1801 et seq.) is further amended—

12 (1) in section 102(a)——

13 (A) in paragraph (1)(A)—

14 (i) in clause (i), by striking “; or” and
15 inserting “;”;

16 (ii) in clause (ii), by striking “;” and
17 inserting “; or”; and

18 (iii) by adding at the end the fol-
19 lowing new clause:

20 “(iii) the acquisition of the contents of
21 communications transmitted exclusively be-
22 tween or among persons reasonably be-
23 lieved to be located outside of the United
24 States and not known to be United States
25 persons, without respect to whether the

1 communication passes through the United
2 States or the surveillance device is located
3 within the United States.”;

4 (B) in paragraph (1)(B), by inserting “in
5 the case of clause (A)(i) or (A)(ii),” before
6 “there is no”; and

7 (C) by adding at the end the following:
8 “Determinations with respect to whether or not
9 a person is reasonably believed to be located
10 outside the United States shall be made in ac-
11 cordance with guidelines promulgated by the
12 Attorney General within 30 days of the enact-
13 ment of the Foreign Intelligence Surveillance
14 Modernization Act of 2007, and said guidelines
15 and the results of the acquisition of commu-
16 nications authorized by this Act in which the
17 communications of U.S. Persons are inciden-
18 tally acquired, and of the implementation of all
19 guidelines developed by the Attorney General
20 governing said acquisition activities, shall be re-
21 viewed not less than quarterly by the court es-
22 tablished by section 103(a) of the Foreign In-
23 telligence Surveillance Act of 1978 (50 U.S.C.
24 1803(a).”; and

25 (2) in section 302(a)(1)(A)—

1 (A) by redesignating clauses (ii) and (iii)
2 as clauses (iii) and (iv), respectively;

3 (B) by inserting after clause (i) the fol-
4 lowing new clause:

5 “(ii) the physical search is solely di-
6 rected at stored electronic communications
7 between or among persons reasonably be-
8 lieved to be located outside of the United
9 States and not known to be United States
10 persons that are in the possession of a pro-
11 vider of a remote computing service, as
12 that term is used in section 2711(2) of
13 title 18, United States Code; the term
14 ‘stored electronic communication’ shall
15 mean any communication, other than a
16 wire or radio communication, that is in
17 ‘electronic storage’ as that term is defined
18 by section 2511(17) of Title 18, United
19 States Code;” and

20 (C) in clause (iii) (as so redesignated), by
21 inserting “in the case of clause (i),” before
22 “there is no substantial likelihood”.

1 **TITLE IV—OTHER MATTERS**

2 **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

3 There is authorized to be appropriated such sums as
4 may be necessary to carry out this Act and the amend-
5 ments made by this Act.

6 **SEC. 402. EFFECTIVE DATE.**

7 (a) IN GENERAL.—Subject to subsection (b), this Act
8 and the amendments made by this Act shall take effect
9 on the date that is 30 days after the date of the enactment
10 of this Act, and all orders issued pursuant to Protect
11 America Act (Public Law 110–55) up to the date of the
12 enactment of this Act shall continue in effect, provided
13 that the activities authorized by orders issued under the
14 Protect America Act (Public Law 110–55) are brought
15 into compliance with the provisions of this Act within 90
16 days of enactment of this Act.

17 (b) EXCEPTION.—Subsection (a) shall not apply to
18 section 102.

19 **SEC. 403. SUNSET.**

20 Effective on December 31, 2009—

21 (1) this Act shall cease to have effect; and

22 (2) the provisions of law amended by this Act
23 are amended to read as they read before the enact-
24 ment of this Act.

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